STATE OF MICHIGAN

COURT OF APPEALS

THOMAS BLICHMANN,

Plaintiff-Appellant,

v

NICHOLSON MANUFACTURING COMPANY and NICHOLSON MANUFACTURING, LTD.,

Defendants-Appellees,

and

LOUISIANA-PACIFIC CORPORATION,

Intervening Plaintiff.

UNPUBLISHED
October 2, 1998

No. 203234
Dickinson Circuit Court
LC No. 96-009294 NO

Before: Markman, P.J., and Griffin and Whitbeck, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

I. Basic Facts And Procedural History

A. The Parties

1. Defendant Nicholson Manufacturing Company

Defendant Nicholson Manufacturing Company[1] designs, manufacturers and distributes various industrial machinery utilized in the timber industry. Among its products is the A-5 debarker, that rapidly rotates freshly cut timber while pushing it forward through a debarking ring thereby removing the timber's bark.

2. Intervening Plaintiff Louisiana-Pacific Corporation

Intervening plaintiff Louisiana-Pacific Corporation is a large timber producing corporation. In 1993, Nicholson Manufacturing and Louisiana-Pacific negotiated the sale of two A-5 debarkers to be used in Louisiana-Pacific's Sagola, Michigan, timber mill. This contract also included in-feed and out-feed conveyor belts, operational manuals and a site visit by a service representative subsequent to installation.

Louisiana-Pacific's Sagola mill manufactures plywood wafer boards through a process whereby aspen logs are moved into the production system by a conveyer belt to the A-5 debarker. Upon exiting the debarker, the logs move over a series of chain conveyor belts into what is called a "slasher deck," an area containing three saws at various intervals that cut the logs into three smaller sections. The section of the production line containing the debarker and the slasher deck is called the "green end." After the logs leave the "green end," now debarked and cut into smaller sections, they are flaked and pressed into plywood wafer boards.

3. Plaintiff Thomas Blichmann

Plaintiff Thomas Blichmann ("Blichmann")[2] is an employee of Louisiana-Pacific at its Sagola mill. Blichmann suffered a severely crushed ankle as a result of a log being thrown by the A-5 debarker.

B. The October 31, 1993 Accident

On October 31, 1993, while in the course of his employment at the Sagola mill, Blichmann attempted to clear a log jam on the slasher deck. Blichmann claimed that it was routine practice to shut down the slasher deck during a log jam and, that if after a few minutes the slasher deck operator could not clear the jam, it was Blichmann's responsibility to assist him. On this particular occasion, while Blichmann was on the slasher deck clearing the jam, a log was propelled from the A-5 debarker onto the slasher deck and pinned his left foot between it and the steel wall of the slasher deck. As a result, Blichmann suffered serious ankle injuries that left him virtually without the use of his left leg below his mid calf.

C. Blichmann's Complaint

In February of 1996, Blichmann filed a complaint against Nicholson Manufacturing. Blichmann claimed that his ankle injury was caused by Nicholson Manufacturing's defective design of its A-5 debarker and that Nicholson Manufacturing should have designed the A-5 debarker so that it interlocked with the other components on the Louisiana-Pacific production line, thereby allowing the debarker to shut down in conjunction with the entire production line. Blichmann also claimed that Nicholson Manufacturing negligently inspected the A-5 debarker after its installation, failed to warn him of the potential hazards that caused his injury and breached implied warranties. In March of 1996, Louisiana-Pacific filed a motion to intervene, that the trial court granted, seeking reimbursement of its worker's compensation expenditures.

D. Nicholson Manufacturing Company's Motion for Summary Disposition

In November of 1996, Nicholson Manufacturing filed a motion for summary disposition claiming that there were no genuine issues of material fact. Nicholson Manufacturing asserted that it owed Blichmann no duty because the A-5 debarker was reasonably safe for its foreseeable uses and that Nicholson Manufacturing had no duty to warn of any potential dangers because Louisiana-Pacific was a sophisticated user and any dangers were open and obvious.

E. The Trial Court's Grant of Summary Disposition

The trial court granted Nicholson Manufacturing's motion for summary disposition, concluding that where there is a production line composed of multiple components, the manufacturer of a single component is not responsible for the safety of the entire production line. Further, the trial court found that the parties had not contracted for Nicholson Manufacturing to integrate the entire production line. Therefore, it held that Blichmann's claims of defective design and duty to warn should fail. With regard to the negligent inspection claim, the trial court held that Blichmann had failed to provide any evidence that Nicholson Manufacturing undertook a duty to inspect the safety of the entire Louisiana-Pacific production line and therefore dismissed that claim as well. The trial court issued its order to this effect in May of 1997.

II. Standard of Review

We review an order granting a motion for summary disposition de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

III. Blichmann's Claim That Nicholson Manufacturing Negligently Designed The A-5 Debarker's Wiring System

Blichmann argues that summary disposition was inappropriate on his claim that Nicholson Manufacturing negligently designed the A-5 debarker's "wiring" system. Blichmann asserts that Nicholson Manufacturing should have interlocked the debarker with the rest of the production line so that the debarker would cease functioning when other components of the line were shut off. We disagree.

A manufacturer may be held liable in negligence for a "design defect." *Prentis v Yale Mfg Co*, 421 Mich 670, 683; 365 NW2d 176 (1984). A manufacturer has a duty to design its product, not to be accident proof, but to eliminate any unreasonable risk of foreseeable injury. *Ghrist v Chrysler Corp*, 451 Mich 242, 248; 547 NW2d 272 (1996); *Boumelhem v BIC Corp*, 211 Mich App 175, 181; 535 NW2d 574 (1995) (Smolenski, J.). Unless it is reasonably foreseeable to a manufacturer of a component product that the purchaser would undertake an unsafe use of the product, the duty of a component manufacturer does not extend to preventing a purchaser from integrating the product into its production line in an unsafe manner. See *Villar v E W Bliss Co*, 134 Mich App 116, 121; 350 NW2d 920 (1984). Therefore, Nicholson Manufacturing had no duty to anticipate that Louisiana-Pacific

would not properly integrate the A-5 debarker into its production line in order to reasonably ensure the safety of Louisiana-Pacific's employees.

Blichmann argues, however, that Nicholson Manufacturing nonetheless had a duty because its project engineer undertook the duty to integrate the A-5 debarker with the rest of the production line, as evidenced by that engineer's conversations with a Louisiana-Pacific electrician and his schematic drawings. However, the project engineer testified that these conversations with the electrician addressed methods to integrate the doors of the A-5 debarker, thereby allowing for the debarker itself to automatically shut down when one of these doors was opened. The electrician also confirmed that his conversations with the project engineer concerned the integration of the A-5 debarker doors. He testified that he never inquired as to how to properly integrate the A-5 debarker with the entire production line. With this evidence uncontroverted, Blichmann's argument that these schematics constituted a defective design is without merit.

IV. Blichmann's Claim Of A Negligent Safety Inspection

Blichmann argues that pursuant to the sales contract, Nicholson Manufacturing was required to conduct a "safety inspection," that it completed in a negligent manner because Nicholson Manufacturing should have seen that the A-5 debarker was not properly integrated. A "negligent inspection" occurs when a party who undertakes, gratuitously or for consideration, to perform an inspection for another, that he should recognize as necessary for the protection of the other's person or things, fails to exercise reasonable care and causes foreseeable harm. *Schanz v New Hampshire Ins Co*, 165 Mich App 395, 402-403; 418 NW2d 478 (1988); Restatement of Torts, 2d, § 323.

The pertinent issue here is whether Nicholson Manufacturing "undertook" to inspect the entire Louisiana-Pacific production line. We find that it did not. First, Nicholson Manufacturing's safety inspection checklist stated that the inspector examined only items pertaining to the A-5 debarker unit itself and do not suggest that he undertook an inspection of the entire production line. Second, Nicholson Manufacturing's regional service manager stated that no one at Louisiana-Pacific requested assistance in integrating the A-5 debarker with the production line nor was it the policy of Nicholson Manufacturing to offer such advice because the integration of a particular component is customarily left to the purchaser or a purchaser's engineering consultant. Third, Nicholson Manufacturing's service manager stated that a service representative's responsibilities pursuant to any sales contract include functions to be performed solely on the A-5 debarker unit. Fourth, Louisiana-Pacific's green end production line supervisor recalled Nicholson Manufacturing's representative visiting the Sagola mill and stated that he basically looked at operation, maintenance and safety regarding the A-5 debarker but did not conduct an expanded inspection of the entire production line. Finally, Nicholson Manufacturing's service manager also stated that safety inspections are generally performed before the integration of a debarker into a purchaser's production line. Since Blichmann provided no evidence that Nicholson Manufacturing either contractually or voluntarily "undertook" the duty to inspect the Louisiana-Pacific production line for safety or specifically to ensure proper integration of the A-5 debarker with the rest of the line, the trial court correctly granted Nicholson Manufacturing's motion for summary disposition with regard to Blichmann's negligent inspection claim.

V. Blichmann's Duty To Warn Claim

Blichmann argues that Nicholson Manufacturing breached a duty to warn him about the dangers associated with the intended uses of the A-5 debarker and foreseeable misuses of the product, even if the debarker was perfectly manufactured. Manufacturers have a duty to warn purchasers or users of dangers associated with the intended use or reasonably foreseeable misuse of their products even if the product is not defective, but the scope of the duty is not unlimited. *Glittenberg v Doughboy Recreational Industries (On Rehearing)*, 441 Mich 379, 387-388; 491 NW2d 208 (1992). However, Michigan law does not regard manufacturers as absolute insurers liable for any injury sustained from using their products. *Id.* at 388, n 8. For these policy reasons, the law qualifies a manufacturer's duty to warn by declaring some risks to be outside that duty. *Id.* at 387-388. In the context of a manufacturer or a supplier providing a dangerous product to a user through a third person, such as an employer, the manufacturer or supplier has a duty to warn the user of the product's dangerous qualities if: (1) the product is defective or dangerous; (2) the manufacturer or supplier has no reason to believe the user will realize its defective or dangerous condition; and (3) the manufacturer or supplier cannot reasonably rely on the purchaser/employer to warn the ultimate user of the danger. *Jodway v Kennametal, Inc*, 207 Mich App 622; 627; 525 NW2d 883 (1994).

Blichmann argues that Nicholson Manufacturing had a duty to warn purchasers of the potential dangers that might result when the A-5 debarker was incorporated with the entire Louisiana-Pacific production line, citing *Pettis v Nalco Chemical Co*, 150 Mich App 294; 388 NW2d 343 (1986) and *Michigan Mutual Insurance Co v Heatilator*, 422 Mich 148; 366 NW2d 202 (1985). We disagree. *Jodway, supra* at 627, requires that the product itself be dangerous or defective. Blichmann concedes that the A-5 debarker was not defective. However, given that it tears the bark off of timber while it is rapidly rotating within the machine and that it has the capability of storing energy on the Louisiana-Pacific production line, the A-5 debarker might properly be classified as dangerous. Nevertheless, Blichmann did not establish that Nicholson Manufacturing had any reason to believe that he would not realize the hazards posed by this danger. *Id*.

In addition, based on the "sophisticated user" defense, Nicholson Manufacturing was entitled to rely on Louisiana-Pacific to warn Blichmann of the potential dangers associated with the debarker. *Jodway, supra* at 627. Where a purchaser is a "sophisticated user" of a manufacturer's product, the purchaser is in the best position to warn the ultimate user of the dangers associated with the product, thereby relieving the sellers and manufacturers of the duty to warn the ultimate user. *Rasmussen v Louisville Ladder Co*, 211 Mich App 541; 536 NW2d 221 (1995); *Ross v Jaybird Automation, Inc*, 172 Mich App 603, 607; 432 NW2d 374 (1988). Louisiana Pacific had been engaged in the timber trade for many years and had extensive experience and knowledge of the components that made up its production line. In fact, there was testimony that the A-5 debarker was very similar to the debarkers Nicholson Manufacturing was replacing and that very little training was necessary for Louisiana-Pacific employees to acquaint themselves with the model. The extent of Louisiana-Pacific's sophistication was further evidenced by its ability to reprogram its main computer to integrate the A-5 debarker on the day after Blichmann's accident, with no assistance from Nicholson Manufacturing. Also, Louisiana-Pacific's safety procedures demonstrated its knowledge of the danger associated with a

non-integrated production line. This evidence shows that Louisiana-Pacific was a sophisticated user of timber manufacturing components and that, even if it did not have the ultimate duty to integrate its own production line, as a sophisticated user, it had the duty to warn its employees of the hazards involved with a non-integrated line.

VI. The "Open And Obvious" Exception To The Duty To Warn Rule

Finally, Blichmann argues that Nicholson Manufacturing's alleged duty to warn was not abrogated by the "open and obvious" exception because the debarker was not a "simple tool," nor was the design defect readily apparent. However, this contention is immaterial in light of our determination that Nicholson Manufacturing had no duty to warn in the first place.

Affirmed.

/s/ Stephen J. Markman
/s/ Richard Allen Griffin
/s/ William C. Whitbeck

[1] Defendant Nicholson Manufacturing, Ltd. is a British Colombian subsidiary corporation which manufactures the A-5 debarker and conducts sales and service in Canada. Since Nicholson Manufacturing, Ltd. participated in this action in name only, "Nicholson Manufacturing" throughout this opinion will refer to Nicholson Manufacturing Company.

[2] Plaintiff Diane Blichmann is Thomas Blichmann's wife. She brought a derivative loss of consortium claim.